

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic NICHOLE M. DESIR
United States Air Force

ACM S31497

26 February 2009

Sentence adjudged 18 April 2008 by SPCM convened at Travis Air Force Base, California. Military Judge: Charles E. Wiedie (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 2 months.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Marla J. Gillman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Naomi N. Porterfield.

Before

WISE, BRAND, and HELGET
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with the appellant's pleas, a military judge sitting as a special court-martial convicted her of one specification of wrongful appropriation, one specification of larceny, and two specifications of obtaining services by false pretenses, in violation of Articles 121 and 134, UCMJ, 10 U.S.C. §§ 921, 934. The adjudged and approved sentence consists of a bad-conduct discharge and two months of confinement.¹

¹ The appellant and the convening authority had a pretrial agreement wherein the convening authority agreed to limit confinement to two months if a bad-conduct discharge was adjudged and four months if it was not adjudged.

The issue on appeal is whether the appellant's plea to wrongfully obtaining services by false pretenses was provident.² Finding no error, we affirm.

Background

In November 2007, the appellant entered her suitemate's room and removed her suitemate's new credit card. The appellant activated the card and then promptly paid her cellular phone bill with the card. She actually paid the bill in two installments on the same day. The appellant paid the bill so that Sprint would continue to provide her with cellular phone service.

On another occasion, the appellant memorized the credit card number of a friend. In December 2007, she then used this credit card number to obtain \$200.00 from USAA and to obtain a phone card from AT&T.

Discussion

In determining whether a guilty plea is provident, the test is whether there is a "substantial basis in law and fact for questioning the guilty plea." *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). "In order to establish an adequate factual predicate for a guilty plea, the military judge must elicit 'factual circumstances as revealed by the accused himself [that] objectively support that plea[.]'" *Id.* at 238 (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). "[A] military judge must explain the elements of the offense and ensure that a factual basis for each element exists." *United States v. Barton*, 60 M.J. 62, 64 (C.A.A.F. 2004) (citing *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996)). We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996) (citing *United States v. Gallegos*, 41 M.J. 446 (C.A.A.F. 1995)).

In the case *sub judice*, sufficient evidence exists to support the military judge's acceptance of the appellant's plea. The appellant admitted she held herself out as the credit card holder when she paid her cellular phone bill in order to obtain continued service from Sprint. After reviewing the entire record of trial,³ and the post-trial submissions by counsel, we conclude the appellant's pleas were provident, and the military judge did not abuse his discretion in accepting those pleas.

² Specifically, the issue is whether the appellant's plea to wrongfully obtaining cellular phone services from Sprint was provident.

³ The Court can consider the entire record when determining the providency of the guilt plea. *United States v. Redlinski*, 58 M.J. 117, 119 (C.A.A.F. 2003).

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, YA-02, DAF
Clerk of the Court